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CHARLES ELMORE

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1948.

No. 534...

THE J. D. RICHARDSON COMPANY,  
Petitioner,  
v.  
THE UNITED STATES,  
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF CUSTOMS AND  
PATENT APPEALS AND BRIEF IN  
SUPPORT THEREOF.**

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
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\_\_\_\_\_  
**Petition**

*To the Honorable the Chief Justice and Associate Justices  
of the Supreme Court of the United States:*

Your petitioner, the J. D. Richardson Company, respectfully prays for a writ of certiorari directed to the United States Court of Customs and Patent Appeals, to bring before this court for review the judgment of the United States Court of Customs and Patent Appeals, entered in the Office of the Clerk of the United States Court of Customs and Patent Appeals on November 2, 1948, reversing the judgment of the United States Customs Court, Third Division, which sustained the claim of the petitioner

herein, as set forth in its protest against the action of the Collector of Customs at the port of Detroit, Michigan, that customs duties should be assessed under paragraph 372 of the Tariff Act of 1930 (19 U. S. C. A. § 1001), upon the value of the alterations made upon the wheel rims here involved, by reason of the provisions of paragraph 1615 (g) of the Tariff Act of 1930, as amended (19 U. S. C. A. § 1201), and ordering the said Collector of Customs to reliquidate the entries accordingly. A certified Transcript of the Record in the case, with the necessary additional copies thereof, have been filed, in compliance with Rules 38 and 42 of the Rules of this court.

### **Jurisdiction**

The judgment of the United States Court of Customs and Patent Appeals, of which review is sought herein, was entered in the Office of the Clerk of said court on November 2, 1948.

The jurisdiction of this court is invoked under Title 28, U. S. Code, Section 1256, Act June 25, 1948, C646, 62 Stat. (H. R. 3214).

### **The Statutes**

(Pertinent parts thereof.)

Paragraph 372, Tariff Act of 1930 (19 U. S. C. A. § 1001):

\* \* \* all other machines, finished or unfinished, not specially provided for, 27½ per centum ad valorem; *Provided*, That parts, not specially provided for, wholly or in chief value of metal \* \* \* shall be dutiable at the same rate of duty as the articles of which they are parts; \* \* \*

Paragraph 1615 (g), Tariff Act of 1930 (19 U. S. C. A. § 1201):

Any article exported from the United States for repairs or alterations may be returned upon the payment of a duty upon the value of the repairs or alterations at the rate or rates which would apply to the article itself in its repaired or altered condition if not within the purview of this subparagraph.

Customs Regulations of the United States, 1943, section 10.8 (a):

10.8 Articles exported for repairs or alterations.—

(a) For the purposes of paragraph 1615 (g), Tariff Act of 1930, as amended, the term “repairs or alterations” shall be held to mean any restoration, change, addition, renovation, cleaning, or other treatment which does not destroy the identity of the article exported or create a new or different article.

### Summary and Short Statement

Prior to May, 1945, the Kelsey Hayes Wheel Company of Detroit, Michigan shipped certain metal bands or rims to its plant in Windsor, Canada, where flanges were turned on them. In May and June of 1945, the flanged rims, which are the subject of this litigation, were imported into the United States, to be used in the assembly of T-26 tanks, being built for the United States Army, in accordance with Ordnance specifications. The Collector of Customs at the port of Detroit assessed duty on the total value of the returned product under the provisions of paragraph 372 of the Tariff Act of 1930, *supra*. The importer protested this action, claiming that as American goods returned the rate of duty provided for under paragraph 372 of the Tariff Act of 1930, *supra*, should apply only to the value of the alteration or flange made to the rims in Canada, pursuant to the provisions of paragraph 1615 (g) of the Tariff Act of 1930, *supra*, and section 10.8 (a) of the Customs Regulations of the United States, 1943.

The petitioner, the J. D. Richardson Company, acted as customs broker for the Kelsey-Hayes Wheel Company and made the customs entry for the returned rims.

The United States Customs Court held that "the articles shipped to Canada were rims of wheels upon which a flange was to be turned." That court further held that under the provisions of the pertinent statutes, as amended, Congress intended that "duty should be assessed only upon the value of the alterations made to the rim exported, upon its return to the United States." The petitioner's claim was sustained.

The United States Court of Customs and Patent Appeals, in reversing the judgment of the United States Customs Court, held that the exported articles were not parts of machines but were manufactures of metal, that they were uncompleted articles, and that they were not altered within the purview of paragraph 1615 (g) of the Tariff Act of 1930, as amended, *supra*, and that the rims which were returned after the flanging operation was performed in Canada, were properly assessed as parts of machines under paragraph 372 of the Tariff Act of 1930, *supra*.

### Questions Presented

1. Did Congress intend to include articles such as petitioner exported to Canada for flanging by the enactment of paragraph 372 of the Tariff Act of 1930, *supra*?
2. Did Congress intend by the enactment of paragraph 1615 (g) of the Tariff Act of 1930, *supra*, that alterations provided for therein should include a manufacturing process such as was performed on the subject merchandise after it was exported to Canada?



### **Reasons for Granting the Writ**

1. The United States Court of Customs and Patent Appeals has decided questions of substance relating to statutes of the United States, which have not been but should be settled by this court.

2. A final determination of the questions presented herein will have far-reaching effects on the policy of industry in this country regarding the economic practicability of exporting articles to other countries for alteration or repair.

WHEREFORE, and for the reasons stated above, it is respectfully submitted that this petition should be granted.

THE J. D. RICHARDSON COMPANY,  
Petitioner.

EUGENE R. PICKRELL,  
Attorney for Petitioner.

ALBERT H. BOSCH,  
of Counsel.

## **BRIEF IN SUPPORT OF PETITION**

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### **Opinions**

The opinion of the United States Customs Court was written by William A. Ekwall, Judge of the United States Customs Court, and concurred in by Genevieve R. Cline, Judge of the United States Customs Court, and was filed in the Office of the Clerk of the United States Customs Court on May 21, 1947. The opinion appears at page 44 of the Record, and is reported in U. S. Customs Court Reports, Vol. 18, at p. 109 (C. D. 1653).

The opinion of the United States Court of Customs and Patent Appeals was written by Charles J. Hatfield, Judge of the United States Court of Customs and Patent Appeals, and concurred in by Judges of the United States Court of Customs and Patent Appeals, Finis J. Garrett, Joseph R. Jackson, Ambrose O'Connell and Noble J. Johnson, and the judgment order thereon was entered in the Office of the Clerk of the United States Court of Customs and Patent Appeals on November 2, 1948, and appears at page 56 of the Record.

### **Grounds of Jurisdiction**

The grounds on which the jurisdiction of this court is invoked are found on page 2 of the petition herein.

### **Statement of the Case**

A concise statement of the case is to be found on page 3 of the petition herein.

## ARGUMENT

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### POINT I

Congress intended that articles such as were exported to and returned from Canada by petitioner should fall under the provisions of paragraph 372 of the Tariff Act of 1930, *supra*.

The petitioner submits regarding this point, that the testimony of its witnesses, as well as that of the respondent, establishes that what was exported to Canada for alteration was a metal band or rim, which was manufactured in the Detroit plant of the Kelsey-Hayes Wheel Company and sent to the Canadian plant of the same company for flanging, in order to meet the specifications of the United States Army, and for subsequent use in the assembly of T-26 tanks.

The petitioner submits further that what was sent to Canada, as outlined above, as well as what was returned, were parts of machines, intended by Congress to fall within the "Provided" provision of paragraph 372 of the Tariff Act of 1930, *supra*. This court has not decided this question involving the interpretation of this Federal statute. It is a question of substance, in that it affects the administrative policy of the Customs Bureau, of the Treasury Department, with regard to numerous importations of a similar nature, and also the policy of many manufacturing concerns of this country engaging in or contemplating engaging in the practice of exporting articles to be altered or repaired in foreign countries.

## POINT II

By the passage of paragraph 1615 (g) of the Tariff Act of 1930, *supra*, Congress intended that a manufacturing process such as was applied to the subject articles in Canada should be included within the meaning of the term "alterations" as used in said paragraph 1615 (g).

The United States Customs Court found that the processes applied to the subject articles in Canada were alterations within the construction placed upon the term "alterations" in the case of *Green v. United States*, 13 Cust. Ct. 273, Abstract 49676 (R. 52). The United States Court of Customs and Patent Appeals held that "the so-called 'rims', exported to Canada, were not subjected to mere alterations within the provisions of paragraph 1615 (g) of the Tariff Act of 1930 \* \* \* (R. 60 ).

The opposite views expressed by the above-mentioned tribunals regarding the intent of Congress in enacting paragraph 1615 (g) of the Tariff Act of 1930, *supra*, create an important issue which requires clarification by this court for the same reasons stated above in support of petitioner's Point I.

## Conclusion

The questions which this application suggests should be definitely settled by this court. The questions are presented in a large number of cases and involve considerable monies.

Respectfully submitted,

EUGENE R. PICKRELL,  
Attorney for Petitioner.

ALBERT H. BOSCH,  
of Counsel.

Dated: New York, N. Y.,  
January 18, 1949.